

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-2676

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Edward W. Elder,

Appellant,

v.

Tyson Foods, Inc.; Snelling Personnel  
Services,

Appellees,

Barbara Faught,

Defendant.

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Appeal from the United States  
District Court for the  
Western District of Arkansas.

[UNPUBLISHED]

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Submitted: June 7, 2001  
Filed: June 13, 2001

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Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

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PER CURIAM.

Edward Elder appeals the District Court's<sup>1</sup> adverse judgment, following a bench trial, in his Title VII and Age Discrimination in Employment Act (ADEA) action

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<sup>1</sup>The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

against his former employer, Tyson Foods, Inc., and Snelling Personnel Services. He alleged race discrimination, age discrimination, and retaliation for filing prior discrimination charges against Tyson. Having reviewed the trial transcript and Elder's exhibits, we find no clear error in the District Court's findings. See Estate of Davis v. Delo, 115 F.3d 1388, 1393 (8th Cir. 1997) (standard of review).

We agree with the District Court that Elder failed to establish a prima facie case against either defendant under Title VII or the ADEA. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) (prima facie case under Title VII); Hindman v. Transkit Corp., 145 F.3d 986, 990 (8th Cir. 1998) (applying McDonnell Douglas analysis to ADEA claim). He presented no evidence that the alleged adverse employment action by Tyson—giving negative references to prospective employers after Elder left Tyson—ever occurred. He also presented no evidence that Snelling refused to refer him for job orders matching his qualifications and demands, or was aware of his discrimination charges against Tyson.

As to Elder's contention that various witnesses lied, the District Court's determinations as to witness credibility are "virtually unreviewable on appeal," United States v. Heath, 58 F.3d 1271, 1275 (8th Cir.), cert. denied, 516 U.S. 892 (1995), and Elder presented only his own speculation to contradict their testimony. We reject Elder's remaining arguments as meritless, and we deny his pending motions.

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.